

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

STRAIGHTSHOT )  
COMMUNICATIONS INC., a ) CASE NO. C10-268Z  
Washington corporation, )

Plaintiff, ) ORDER

V. )

TELEKENEX, INC., a Delaware corporation, et al.,

## Defendants.

TELEKENEX, INC., a Delaware  
Corporation,

### Third-Party Plaintiff,

V. )

**STRAIGHTSHOT RC, LLC, a Delaware limited liability company; et al.,**

## Third-Party Defendants.

01        THIS MATTER comes before the Court on the Motion to Dismiss, docket  
 02 no. 85, filed by Plaintiff Straightshot RC, L.L.C.’s (“SRC”). Having reviewed  
 03 the parties’ briefing, the Court enters the following Order.

04 **I. Discussion**

05        SRC moves to dismiss Defendant Mammoth Networks, L.L.C.’s  
 06 (“Mammoth”) counterclaim and third-party complaint for debt recharacterization  
 07 (fourth cause of action), arguing that it is not a cognizable claim for relief outside  
 08 of bankruptcy. SRC also moves to strike the following affirmative defenses in  
 09 Mammoth’s answer as unsupported by any facts: (1) estoppel/waiver (third  
 10 affirmative defense); (2) failure to mitigate damages (fourth affirmative defense);  
 11 and (3) failure to protect information (fifth affirmative defense).

13        **A. SRC’s Motion to Dismiss Mammoth’s Debt Recharacterization  
 14        Claims**

15        Dismissal under Fed. R. Civ. P. 12(b)(6) for failure to state a claim is proper  
 16 where the complaint fails to state a cognizable legal theory or fails to allege sufficient  
 17 facts to state a plausible claim for relief. Schroyer v. New Cingular Wireless Servs.,  
 18 Inc., 622 F.3d 1035, 1041 (9th Cir. 2009). SRC argues that Mammoth’s cause of action  
 19 for “debt recharacterization” is not a cognizable claim for relief in a federal case.

20        Mammoth cites to a number of bankruptcy court opinions holding that, under  
 21 section 105 of the bankruptcy code (11 U.S.C. § 105(a)), a bankruptcy court has the  
 22 equitable authority to adjudicate a claim for debt recharacterization. See In re

01 Autostyle Plastics, Inc., 269 F.3d 726, 748 (6th Cir. 2001); In re Official Comm. of  
 02 Unsecured Creditors for Dornier Aviation (North America), Inc., 453 F.3d 225, 233 (4th  
 03 Cir. 2006). In the Ninth Circuit, however, bankruptcy courts do not have the power to  
 04 adjudicate a claim for debt recharacterization. In re Pacific Express, Inc., 69 B.R. 112,  
 05 115 (B.A.P. 9th Cir. 1986).

06 Mammoth argues that although In re Pacific Express precludes bankruptcy courts  
 07 in the Ninth Circuit from adjudicating claims for debt recharacterization, it does not  
 08 preclude this Court from hearing such a claim because this Court has broader equitable  
 09 powers than a bankruptcy court. In support of this contention, Mammoth relies heavily  
 10 on a non-bankruptcy district court case from the Eastern District of New York, where  
 11 the court held that the plaintiff could pursue a claim for debt recharacterization. Gasser  
 12 v. Infant Int'l, Inc., 2008 WL 2876531, \*8 n.7 (E.D.N.Y 2008). The court in that case  
 13 adopted the cause of action from the bankruptcy context without discussion or analysis.  
 14 Id. The Court declines to follow the Gasser decision, and concludes that federal law  
 15 does not provide for a cause of action for debt recharacterization. Arena Dev. Grp..  
 16 L.L.C. v. Naegele Commc'ns, Inc., 2007 WL 2506431, \*7 (D. Minn. 2007)  
 17 (“Declaratory relief for recharacterization of debt to equity and equitable subordination  
 18 are not cognizable causes of action in federal district court.”); Englewood Lending, Inc.  
 19 v. G&G Coachella Invs., L.L.C., 651 F. Supp. 2d 1141, 1146 (C.D. Cal. 2009)  
 20 (“Borrowers’ authorities show recharacterization is a tool bankruptcy courts use when  
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01 deciding the priority to give certain claims. They do not show it is a claim parties can  
 02 assert against each other under . . . federal law independent of bankruptcy  
 03 proceedings.”); see also *Rubbermaid Inc. v. Robert Bosch Tool Corp.*, 2010 WL  
 04 3834410 (C.D. Ill. 2010).

05 In the alternative, Mammoth argues that debt recharacterization is a cognizable  
 06 claim for relief under Washington state law. There appear to be some states that  
 07 provide a common law cause of action for debt recharacterization. See James M.  
 08 Wilton & Stephen Moeller-Sally, Debt Recharacterization under State Law, 62 Bus.  
 09 Law. 1257, 1268 (2007) (citing Massachusetts and Wisconsin cases recognizing debt  
 10 recharacterization as a defense to the enforceability of insider loans). Although the  
 11 Court directed Mammoth to submit supplemental briefing on the viability of a debt  
 12 recharacterization claim under Washington law, see Minutes, docket no. 129, Mammoth  
 13 failed to provide any authority in support of such a claim. Instead, Mammoth urges the  
 14 Court to adopt the standard for debt recharacterization claims applied in Massachusetts  
 15 and Wisconsin. The Court declines to create a new cause of action that is unsupported  
 16 by Washington law. Mammoth’s debt recharacterization cause of action is not  
 17 cognizable under federal law or Washington state law.

18           **B.     SRC’s Motion to Strike Mammoth’s Affirmative Defenses**

19           A court may strike from a pleading an “insufficient defense or any redundant,  
 20 immaterial, impertinent, or scandalous matter.” Fed. R. Civ. P. 12(f). A defense is  
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01 insufficient if it is unsupported by any facts that would entitle the defendant to relief.  
02 Qarbon.com, Inc. v. eHelp Corp., 315 F. Supp. 2d 1046, 1049 (N.D. Cal. 2004). A  
03 reference to a legal doctrine, standing alone, is insufficient notice. Id. If the Court  
04 chooses to strike a defense, leave to amend should be freely given so long as there is no  
05 prejudice to the opposing party. Wyshak v. City Nat'l Bank, 607 F.2d at 824, 826 (9th  
06 Cir. 1979).

07 SRC argues that the Court must strike Mammoth's affirmative defenses of  
08 waiver/estoppel, failure to mitigate damages, and failure to protect information because  
09 Mammoth has not pled any facts to support these defenses. The Court agrees that  
10 Mammoth's answer only raises these defenses in conclusory fashion, without  
11 referencing any particular facts. See Answer, docket no. 78 at 10. Mammoth's  
12 answer fails to plead sufficient facts to give SRC fair notice of the defenses.

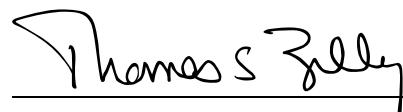
14 **II. Conclusion**

15 The Court GRANTS SRC's motion to dismiss, docket no. 85. Mammoth's  
16 fourth cause of action for debt recharacterization is DISMISSED with prejudice. The  
17 Court further GRANTS SRC's motion to strike, docket no. 85, and STRIKES  
18 Mammoth's third, fourth, and fifth affirmative defenses without prejudice. Mammoth  
19 has requested leave to amend as to these affirmative defenses, and the Court concludes  
20 that SRC will not be prejudiced by an amendment. The Court GRANTS Mammoth's  
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01 request for leave to file an amended answer as to these defenses. Mammoth shall file  
02 any amended answer no later than December 13, 2010.

03 IT IS SO ORDERED.

04 Filed and entered this 19th day of November, 2010.  
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08 Thomas S. Zilly  
09 United States District Judge  
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